



DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0045]

Agency Information Collection Activities; Revision of a Currently Approved Collection:

Petition by Entrepreneur to Remove Conditions on Permanent Resident Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the *Federal Register* to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: All submissions received must include the OMB Control Number 1615-0045 in the body of the letter, the agency name and Docket ID USCIS-2006-0009. Submit comments via the Federal eRulemaking Portal Web site at <https://www.regulations.gov> under e-Docket ID number USCIS-2006-0009. USCIS is limiting communications for this Notice as a result of USCIS' COVID-19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721-3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please

note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

This Information Collection Revision would amend the Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status to clarify who may file the petition in different situations.

Background:

On January 13, 2017, DHS published a Notice of Proposed Rulemaking (NPRM), EB-5 Immigrant Investor Program Modernization. See 82 FR 4738 (Jan. 13, 2017). The NPRM sought to “clarify the process by which an immigrant investor’s spouse and children file separate Form I-829 petitions when they are not included in the Form I-829 filed by the immigrant investor. Generally, an immigrant investor’s derivatives should be included in the principal immigrant investor’s Form I-829 petition. See [prior] 8 CFR 216.6(a)(1). However, there are situations in which derivatives may not be included on the principal immigrant investor’s Form I-829 petition... In such circumstances, if the immigrant investor would have otherwise been eligible to have his or her conditions on status removed, then the derivatives would remain eligible to remove the conditions on their status even if the immigrant investor cannot or will not file a Form I-829 petition.” 82 FR at 4750.

The NPRM continued, “DHS also clarifies, however, that consistent with current practice, each derivative must file a separate Form I-829 petition in all other situations in which the investor’s spouse and children are not included in the investor’s Form I-829 petition. *See id.*” 82 FR at 4750.

On July 24, 2019, DHS published a Final Rule, EB-5 Immigrant Investor Program Modernization. See 84 FR 35750 (Jul. 24, 2019). In response to a public comment regarding

derivative filing, DHS responded that it “proposed to standardize the process for those derivatives who file an individual Form I-829 petition and cannot be included on the principal’s Form I-829, generally because the principal fails or refuses to file a Form I-829. Under these circumstances, the final rule clarifies the current DHS practice of requiring all derivatives connected to a single principal investor to file separately... This final rule only allows derivatives to apply together on a single Form I-829 petition when the principal is deceased, because INA 204(l) directs DHS to adjudicate ‘notwithstanding the death of the qualifying relative.’... This rule does not change the current DHS practice, and DHS is simply clarifying language in 8 CFR 216.6(a)(1) to avoid a situation where derivatives filing separately do so incorrectly, causing their petition to be rejected.” 84 FR at 35782.

Reasons for Change

DHS is clarifying language from the preamble of both the NPRM and the Final Rule with this form revision regarding who may file the form. When DHS stated that a derivative may file a Form I-829 petition if the principal immigrant investor “fails or refuses to file a Form I-829,” DHS was referring to the principal’s failure or refusal to file a Form I-829 for the derivative(s). The current DHS practice is for derivatives not included on the principal’s Form I-829 to file a separate Form I-829. Therefore, DHS intended the comment response in the Final Rule to be read as: DHS proposed to standardize the process for those derivatives who file an individual Form I-829 petition and cannot be included on the principal’s Form I-829, generally because the principal fails or refuses to file a Form I-829 for the derivative(s).

DHS understands that the failure to include “for the derivative(s)” may have caused confusion concerning whether the derivative of a principal immigrant investor can petition for and obtain the removal of conditions if the principal immigrant investor has not petitioned to remove his or her conditions. Through its regulation, DHS only intended to clarify existing practice for derivatives seeking to remove conditions on permanent residence. Currently, if the principal immigrant is unable to remove his or her conditions, the derivative immigrant is

generally unable to remove his or her conditions, except where the principal has died, as statutorily required by INA 204(l).

This is consistent with the terms ‘alien spouse’ and ‘alien child’ as defined by INA 216A(f)(2). It is also consistent with 8 CFR 216.6(a)(1)(ii), and how derivative status is similarly interpreted across immigration benefits: that a derivative generally does not have status without the principal.

Comments:

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS-2006-0009 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond,

including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

- (1) Type of Information Collection: Revision of a Currently Approved Collection.
- (2) Title of the Form/Collection: Petition by Entrepreneur to Remove Conditions on Permanent Resident Status.
- (3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-829; USCIS.
- (4) Affected public who will be asked or required to respond, as well as a brief abstract:
Primary: Individuals or households; Business or other for-profit. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove conditions on his or her conditional residence.
- (5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection I-829 is 2,790 and the estimated hour burden per response is 4.17 hours. The estimated total number of respondents for the information collection Site Visit is 150 and the estimated hour burden per response is 2 hours. The estimated total number of respondents for the information collection of Biometric Processing is 2,790 and the estimated hour burden per response is 1.17 hours.
- (6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 15,189 hours.
- (7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$1,308,077.

Dated: May 7, 2021

Samantha L Deshommnes,
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Regulatory Coordination Division,
Office of Policy and Strategy,
U.S. Citizenship and Immigration Services,
Department of Homeland Security.

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